NO. 86-1131

Supreme Court, U.S.
FILED
DEC 15 1986
JOSEPH F. SPANIOL, JR.
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

RICHARD L. FINCHER,

Appellant,

VS.

FLORIDA DEPARTMENT OF LABOR and EMPLOYMENT SECURITY - UNEMPLOYMENT APPEALS COMMISSION,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

JURISDICTIONAL STATEMENT

OF COUNSEL

RICHARD L. FINCHER,
P.O. BOX 1294,
KISSIMMEE, FL. 32742
APPELLANT, PRO SE
PH. (305)846-2387

FILING DATE_____

QUESTION PRESENTED FOR REVIEW

(1) This case involves the question as to whether or not the 11th Amendment to the U.S. Constitution may constitutionally be applied to the Appellee (an Administrative Agency) "Commission", for the purpose of the Appellee gaining immunity from Federal Judicial litigation and enforcement of provisions of the 14th Amendment to the U.S. Constitution? The Court below narrowed this issue to the following:

(a) Whether or not the "Commission" maintains status as an arm of State protected by the 11th Amendment?

(b) Whether or not a civil monetary damage award against the "Commission" would be satisfied by payment from general State revenues?

TABLE OF AUTHORITIES

Cases — Page(s)

California Dept. of Human Resources V. Java, 402 US 121, 91 S.Ct. 1347, 28 L.Ed 2d 666:..7.

Miller-Davis Co. V. Illinois State Toll Highway Authority,(1977,CA7 Ill.), 567 F.2d 323:.....7.

Phillbrook V. Glodgett, 421 US 707, 714, 95 S.Ct. 1893, 44 L.Ed 2d 525, 533 (1975):.....7.

Code of Federal Regulation.

Title 20 CFR Part 601.....5.

Florida Statutes.

Section 20.171.....2.-4.

United States Code.

Amendment Five.....4.

Amendment Eleven.....-i-.-2.-3.-4.-7.

Amendment Fourteen.....-i-.-3.-4.-5.-6.

Title 26 USC Sec. 3301-11.....5.

Title 28 USC Sec. 1254(1).....3.

Title 42 USC Sec. 501-04.....5.

Title 42 USC Sec. 503(a)(3).....3.-4.

Title 42 USC Sec. 1101-08.....5.

OPINIONS BELOW

(1) The Opinion of the 11th Circuit Court of Appeals held that; it is presumed the State of Florida would be responsible for any of the Commission's debts that could not be paid from the Commission's Federal revenues, including Appellant Fincher's Claim for expenses; and therefore in this case No. 85-3978 we Affirm.

please see A-1 & 2 in appendix herein.

(a) The Appeals Court is apparently basing that presumption on the State exercising a degree of control over the "Commission";

(b) the State Legislatures inactments of State Statutes that appropriate the expenditures of the Commission's Federally funded revenue and;

(c) the Commission's State Statutory creation as a separate entity from State Fla.Stat.20.171. Opinion reported at, 798 F.2d 1371(11thCir.1986)

(2) The Opinion of the District Court (MD of Fla., Orlando Div.),NO.85-1122-CIV-ORL-18, dated December 16, 1985, held that this case is unquestionably one against the State and is barred by the 11th Amendment to the U.S. Constitution. (Not reported): See Appendix B-3 herein.

JURISDICTION

The Judgment of the Appeals Court declaring that the Commission fell within the purview of 11th Amendment immunity, was entered on September 9, 1986. A Petition for rehearing was filed in that Court on September 25. That Petition was denied by Order on October 8.

See Order, Appendix D-5. A Notice of Appeal to this Court was filed in the 11th Circuit U.S. Court of Appeals, on Oct., 16 and this statment was filed_____within the time limitation allowed by law. The Jurisdiction of this Court is invoked under Title 28 USC Sec. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The 11th Amendment to the U.S. Constitution provides in pertinent part:

"The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States, by citizens of another State, or by citizens or subjects of any foreign State."

The 14th Amendment to the U.S. Constitution provides in pertinent part, Section 1:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Title 42 USC Sec. 503(a)(3) provides:

"Opportunity for a fair hearing, before an impartial tribunal, for all individuals whose Claims for unemployment compensation are denied."

STATEMENT OF CASE

(1) This case involves a dispute between Appellant, Mr. Fincher and Appellee (a federal Administrative Agency) that arose during the course of that Agency's examination of Appellant's eligible claim for benefits, when that Agency allegedly violated Title 42 USC 503(a)(3), thereby depriving Appellant of Rights guaranteed by the 5th and 14th Amendments to the U.S. Constitution.

(2) After exhausting all Administrative and State Judicial remedies, Appellant brought Civil Rights action against Appellee (in the U.S. District Court) alleging deprivation of the dichotomy of Due Process of Law, and Equal Protection of the Laws, as exemplified by the 14th Amendment. The Appellee requested the Court to dismiss action, pursuant to the 11th Amendment. The Court granted that request holding that the action is against the State.

(3) Appellant contended that, since the Appellee is a Federal-State Agency, i e;

(a) created by State Statute as a separate entity from State (Fla.Stat.Sec. 20.171);

(b) is 100% Federally funded, pursuant to Title 42 USC Sec. 1101-08 and;

(c) is regulated by the U.S.Dept. of Labor (an Agency of the United States) for the purpose of administering the Federal Unemployment Insurance program within the State of Florida pursuant to 26 USC Sec. 3301-11 and 42 USC Sec. 501-04, in accordance with 20 CFR Part 601 and State Statutes approved by the U.S. Secretary of Labor; the Agency is not entitled to enjoy immunity from Federal Judicial litigation and enforcement of provisions of 14th Amendment.

(4) Pursuant to Appellant's contention, Appellant appealed the District Court's Order to the 11th Circuit U.S. Court of Appeals. The Appeals Court affirmed the District Court's Order, and this Appeal, inter alia, ensued.

(5) If the aforementioned Agency is adjudged to be entitled to avoid litigation (in our Federal Courts) of disputes arising between it and private citizens (involving allegations of it depriving those citizens of Rights guaranteed by the 14th Amendment), then can the 14th

Amendment be adequately enforced?

(6) The purpose intended for the 14th Amendment was to protect individuals from arbitrary oppressive actions by powerful State governments, and their Agencies.

(7) The Appeals Court erred when it presumed that any monetary recovery from a damage award against the Appellee (Commission) would be paid from the State's general revenues.

THE QUESTION IS SUBSTANTIAL

(1) Our Democracy is founded upon the sovereignty of the Individual. The question presented herein for review puts human rights and Individual sovereignty at issue.

(a) Is it fair to Individual Citizens for an Agency (such as the Appellee) to be Constitutionally immune from Federal Judicial litigation of disputes it creates between itself and Individuals (with respect to 14th Amendment, and Federal Statutory issues), during the course of its delegated business?

(b) Should an Individual be deprived of any possible Federal Judicial remedy for grievance

created by those disputes with such Agencies as the Appellee? Should those type of Agencies be allowed to function arbitrarily without restraint?

(2) Although 11th Amendment issues have been before this Court many times, this Court has not tested the Appellee, nor other similar Agencies, with respect to the application of the 11th Amendment.

(a) Other similar Agencies that have been involved in litigation in this Court, have not raised that issue.

California Dept. of Human Resources V. Java, 402 U.S. 121, 91 S.Ct. 1347, 28 L.Ed 2d 666:

Phillbrook V. Glodgett, 421 U.S. 707, 714, 95 S.Ct. 1893, 1899, 44 L.Ed 2d 525, 533 (1975):

(b) The Appeals Court's Opinion in this case, is in conflict with other Appeals Court's Opinions. Miller-Davis V. Illinois State Toll Highway Authority, (1977, CA7 Ill.), 567 F.2d 323:

CONCLUSION

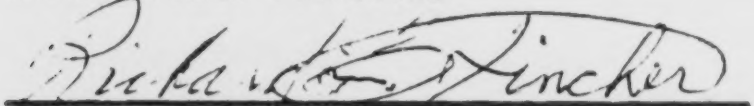
WHEREFORE, It is submitted, that the question presented herein is substantial, and is of great public importance and concern.

Appellant prays that probable jurisdiction will be noted and invoked.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing and following has been furnished by regular U.S. Mail to Mr. John D. Maher, at Room 221 Ashley Building, 1321 Executive Center Drive, East, Tallahassee, Florida 32301-8247 on this 14 day of December, 1986.

RESPECTFULLY SUBMITTED



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Page(s)

APPENDIX A

Opinion of the United States Court of Appeals for the 11th Circuit.....1.-5..

APPENDIX B

Opinion Order of the United States District Court (Middle District of Florida, Orlando Division) dismissing Appellant's Civil Rights Action.....6.-7..

APPENDIX C

Judgment Order of the United States Court:. of Appeals for the 11th Circuit.....8.-9..

APPENDIX D

Order of the United States Court of Appeals for the 11th Circuit, denying Appellant's Motion for rehearing.....10.

APPENDIX E

Appellant's Notice of Appeal to the Supreme Court of the United States, from the Judgment Order of the United States Court of Appeals for the 11th Circuit.....11.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 85-3978
Non-Argument Calendar

D.C. Docket No. 85-1122-18

RICHARD L. FINCHER,

Plaintiff-Appellant,

Versus

STATE OF FLORIDA DEPT. OF LABOR and EMPLOYMENT SECURITY - UNEMPLOYMENT APPEALS COMMISSION,

Defendants-Appellees.

Appeal from the United States District Court for the Middle District of Florida.

Before GODBOLD, Chief Judge, Hill and Anderson, Circuit Judges.

PER CURIAM:

Appellant Richard Fincher brought this 42 USC Sec. 1985 civil rights action against the State of Florida, Department of Labor and Employment Security, Unemployment Appeals Commission (Commission) alleging that the Commission violated the due process and equal protection clauses of the fourteenth amendment when it denied him unemployment compensation benefits. The district court dismissed the suit, holding that the Eleventh Amendment barred the 42 USC Sec.

1985 claim. We affirm.

(1) Whether an entity is an arm of the state protected by the Eleventh Amendment "turns on its function and character as determined by state law". Sessions v. Rusk State Hospital, 648 F.2d 1066, 1069 (5th Cir.1981). Significant in this determination are the definitions of "state", the state's degree of control over the entity, and the fiscal autonomy of the entity. United Carolina Bank v. Board of Regents, 665 F.2d 533 (5th Cir.1982). Application of these factors reveals that the Commission falls within the purview of Eleventh Amendment immunity.

(2) The Florida Unemployment Appeals Commission is a creature of Florida statute, operating as an agency within the executive branch of the state government. See Fla.Stat. Sections 20.03 (11); 20.171. Though the Commission receives financial support from a federal agency, the Bureau of Employment Security, Florida exercises a degree of administrative and fiscal control over the Commission. The Commission must submit any request or budgets for federal

funds to the Executive Office of the Governor for approval unless otherwise specifically authorized, and once federal money is appropriated by Congress it may not be expended unless appropriated by the Florida legislature. Fla.Stat. Sections 216.212; 443.191. Further, the funds by which Commission members are paid reside in the state treasury, and include all monies appropriated by the State of Florida, the United States Government, and other states. Fla.Stat. Sec. 443.211.

(3) Fincher's claim that any recovery would not come from state funds is unavailing. Because the Commission's budget is submitted to the Florida legislature, it is presumed the state would be responsible for any debts that could not be paid out of the Commission's revenues. Fouche v. Jekyll Island-State Park Authority, 713 F.2d 1518, 1521 (11th Cir.1983). Further while Fla.Stat. Sec. 443.201(1) limits Florida's liability for unemployment compensation benefits to the amount of money received from the Bureau of Employment Security or

other federal agencies, it is not specified whether the Commission's other debts are those of the state. The fact that Florida has limited liability for unemployment benefits does not preclude or foreclose the state from appropriating money to pay the Commission's other debts, including Fincher's claim for $6,000 in expenses. See Fouche, 713 F.2d at 1521. Fincher has failed to sufficiently demonstrate that the monetary relief sought would not be extracted from the State's treasury.

Therefore,we conclude that the Eleventh Amendment bars Fincher's claim unless Florida has waived its immunity. "Absent a legitimate abrogation of immunity by Congress or a waiver of immunity by the state being sued, the Eleventh Amendment is an absolute bar to suit by an individual against a state or its agencies in federal court." Gamble v. Florida Department of Health and Rehabilitative Services, 779 F.2d 1509 (11th Cir.1986). We find no express congressional abrogation of the state's Eleventh Amendment immunity with respect to 42 USC 1985

actions. Nor has the state of Florida waived its Eleventh Amendment immunity in federal civil rights actions. See Ostroff v. Florida Department of Health and Rehabilitative Services, 554 F.Supp. 347, 355-56 (M.D.Fla.1983). The district court properly dismissed appellant's claim.

AFFIRMED: SEP. 09 1986

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

RICHARD L. FINCHER,

Plaintiff,

vs. CASE NO. 85-1122-18

STATE OF FLORIDA, DEPARTMENT OF LABOR and EMPLOYMENT SECURITY - UNEMPLOYMENT APPEALS COMMISSION, et al,

Defendants.

ORDER

This case is before the Court upon defendant Unemployment Appeals Commission's motion to dismiss. This is a pro se action by an unsuccessful, unemployment insurance benefit claimant against the state agency that denied him benefits. The complaint alleges unfairness in the defendant's procedure which denied plaintiff due process.

This case is unquestionably one against the state. It is therefore barred by the doctrine of sovereign immunity as exemplified by the Eleventh Amendment to the United States Constitution. See Pinhearst State School and Hospital v. Halderman, __U.S.__, 105 S.Ct. 12 45, 79 L.Ed.2d 67 (1984).

Therefore, this case must be dismissed for lack of jurisdiction. Accordingly, it is.

ORDERED that defendant Unemployment Appeals Commission's motion to dismiss is hereby GRANTED. This case is hereby DISMISSED WITHOUT PREJUDICE.

SO ORDERED in Chambers at Orlando, Florida, this 16 day of December, 1985.

G. KENDALL SHARP
United States District Judge

Copies to:

Richard L. Fincher, Pro Se
Mr. John D. Maher

C-8

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 85-3978

Non-Argument Calendar

D.C. Docket N. 85-1122-18

RICHARD L. FINCHER,

Plaintiff-Appellant,

Versus

STATE OF FLORIDA DEPT. OF LABOR and EMPLOYMENT SECURITY - UNEMPLOYMENT APPEALS COMMISSION,

Defendants-Appellees.

Appeal from the United States District Court for the Middle District of Florida

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Before GODBOLD, Chief Judge, Hill and Anderson, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Middle District of Florida, and was taken under submission by the Court upon the record and briefs on file, pursuant to Circuit Rule 23:

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the

that the Judgment of the said District Court in this cause be and the same is hereby, AFFIRMED;

It is further ordered that Plaintiff-Appellant pay to Defendants-Appellees, the cost on appeal to be taxed by the Clerk of this Court.

Entered: September 9, 1986
For the Court: Miguel J. Cortez, Clerk

By: Karen A. Foster
Deputy Clerk

ISSUED AS MANDATE: OCT. 17, 1986:

D-10

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 85-3978

U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
FILED
OCT 08 1986
MIGUEL J. CORTEZ
CLERK

RICHARD L. FINCHER,
Plaintiff-Appellant,

versus

STATE OF FLORIDA DEPT. OF LABOR and EMPLOYMENT SECURITY- UNEMPLOYMENT APPEALS COMMISSION,
Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

ON PETITION(S) FOR REHEARING
(OCT. 8, 1986)

BEFORE: GODBOLD, HILL and ANDERSON, CIRCUIT Judges
PER CURIAM:

The petition(s) for rehearing filed by appellant Richard L. Fincher is Denied

ENTERED FOR THE COURT:

James C. Hill
United States Circuit Judge

REHG-4
(Rev.9/85)

E-11

U.S. COURT OF APPE
ELEVENTH CIRCU

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

FILED
OCT 16 1986

MIGUEL J. CORTE
CLERK

RICHARD L. FINCHER,

Appellant,

VS.

FLORIDA DEPARTMENT OF LABOR and EMPLOYMENT SECURITY - UNEMPLOYMENT APPEALS COMMISSION,

Appellee.

NO. 85-3978

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NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that RICHARD L. FINCHER, the Appellant in this case, hereby appeals to the Supreme Court of the United States from the judgment of the United States Court of Appeals for the Eleventh Circuit dated September 9, 1986, rehearing denied by Order dated October 8, 1986 , Affirming the judgment Order of the United States District Court for the Middle District of Florida, Orlando Division dated December 16, 1985 (Case NO. 85-1122-18

This appeal is taken pursuant to 28 USC Sec. 1254(1).

RESPECTFULLY SUBMITTED

Richard L. Fincher

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